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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,738	08/04/2003	Graham John Myatt	9151R	5595

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EXAMINER

WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/633,738	Applicant(s) MYATT ET AL.	
	Examiner EVERETT WHITE	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The amendment filed September 23, 2004 has been received, entered and carefully considered. The amendment affects the instant application accordingly:
 - (A) Comments regarding Office Action have been provided drawn to:
 - (i) Claim objection, which has been withdrawn;
 - (ii) 103(a) rejection, which has been maintained for the reasons of record.
2. Claims 1-32 are pending in the case.
3. The text of those sections of Title 35, U. S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

1. Claims 1-27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al (US Patent No. 6,045,847) in view of Marlett et al (US Patent No. 6,287,609) or Colliopoulos (US Patent No. 5,009,916) for the reasons set forth on pages 2-5 of the Office Action mailed March 23, 2004.
2. Applicant's arguments filed September 23, 2004 have been fully considered but they are not persuasive. Applicants argue against the rejection on the ground that the Nakamura et al patent does not teach dispersing components for compositions containing a polysaccharide component. This argument is not persuasive because Nakamura et al discloses a water-soluble hemicellulose, which is a polysaccharide containing xylose and arabinose along with other constituent saccharides that include galactose, fucose, rhamnose and galacturonic acid. Nakamura et al discloses that the water-soluble hemicellulose may be used in an emulsified state with fat or oil to achieve the function of producing a shorter soaking time and allowing a greater amount of water to permeate the rice, but also sets forth that other quality enhancers or additives may be combined therewith as deemed suitable. Examples of quality enhancers and additives listed in the Nakamura et al patent include guar gum, process starch and other starches. Nakamura et al also teaches that the water-soluble hemicellulose as part of a soaking time-shortening agent for grain preparation may be distributed and sold in

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emulsified or suspended form with a fat or oil, or in solution form in water, saline or a solution of an organic acid such as acetic acid (see column 4, 2nd and 3rd paragraphs). The water-soluble hemicellulose composition of the Nakamura et al patent comprising the named constituent saccharides and quality enhancers or additives such as guar gum, starch and acetic acid embraces the instantly claimed composition comprising the named polysaccharide components and binders, suspending agents and edible acids thereof.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in this art would be motivated to combine the teachings of the Nakamura et al, Marlett et al and Colliopoulos patents in a rejection of the claims under 35 U.S.C. 103 since all the patents set forth dietary compositions that comprise xylose and arabinose. Applicants also argue that the artisan would not substitute components described in Nakamura et al or Colliopoulos with components described in Marlett et al, since Marlett et al teaches the removal of those components which contribute to the unpleasant and unsafe qualities of the husk. This argument is not persuasive. The Marlett et al patent was cited in the rejection because the patent discloses preparation of fractions obtained from psyllium seed husks that comprised mostly of xylose and arabinose. See column 4, lines 48-53 of the Marlett et al patent wherein a fraction B obtained from psyllium seed husks has 50% xylose and arabinose by weight and in a preferred embodiment at least 85% xylose and arabinose by weight. Also see column 5, lines 3-6 wherein Marlett et al discloses the ratio of weights of xylose to arabinose of Fraction B as being between 2.5 and 4.5, and between 3.0 and 4.0 in a preferred embodiment, which covers the xylose to arabinose ratio set forth in the instant claims. Furthermore, see Table 1 of the Marlett et al patent wherein other polysaccharide particles are present in

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compositions of psyllium seed husk fractions that include galactose, glucose and uronic acids, as set forth in the instant claims. It was not noted in the disclosure of the Marlett et al patent that the galactose, glucose and uronic acids were removed from the composition.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., improved gellation) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Accordingly, the rejection of Claims 1-27 under 35 U.S.C. 103(a) as being unpatentable over the Nakamura et al patent in view of the Marlett et al patent or Colliopoulos patent is maintained for the reasons of record.

3. Claims 11 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al and Marlett et al as applied to Claims 1-27 above, and further in view of Barbera (US Patent No. 5,425,945) for the reasons disclosed on pages 5 and 6 of the Office Action mailed March 23, 2004.

4. Applicant's arguments filed September 23, 2004 have been fully considered but they are not persuasive. Applicants argue against the rejection on the ground that the reference patents do not disclose a dispersing component as disclosed in accordance with the present invention. As argued in the above rejection of Claims 1-27 under 35 U.S.C. 103, the Nakamura et al patent sets forth dispersing components that can be used in a composition comprising xylose and arabinose. Applicants statement of the instant rejection failure to set forth a prima facie case of obviousness is acknowledged, but not agreed with. See the arguments presented in the above rejection of Claims 1-27 under 35 U.S.C. 103. Accordingly, the rejection of Claims 11 and 14 under 35 U.S.C. 103(a) as being unpatentable over the Nakamura et al and Marlett et al patents as applied to Claims 1-27 above, and further in view of Barbera patent is maintained for the reasons of record.

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5. Claims 1 and 28-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Colliopoulos (US Patent No. 5,009,916) in view of Marlett et al (US Patent No. 6,287,609).

6. Applicant's arguments filed September 23, 2004 have been fully considered but they are not persuasive. Applicants argue against the rejection on the ground that the use of psyllium husk by the references present inherent problems that have been found with psyllium husk in the past. It is not clear to the Examiner what problems Applicants are referring to. Regardless of the alleged problems, the combination of the Colliopoulos and Marlett et al patent suggest that the instantly claimed method of admixing a composition comprising xylose, arabinose and at least one dispersing component recited in Claim 1 with an aqueous liquid is well known in the art (see rejection in the last Office Action). The Marlett et al patent further teaches the use of compositions comprising psyllium seed husks as a dietary substance to promote laxation and as a hypocholesterolemic agent as set forth in instant Claim 31. Accordingly, the rejection of Claims 1 and 28-32 under 35 U.S.C. 103(a) as being unpatentable over the Colliopoulos patent in view of the Marlett et al patent is maintained for the reasons of record.

Summary

4. All the Claims are rejected.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner's Telephone Number, Fax Number, and Other Information


6. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit our website at www.uspto.gov and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (571) 272-0660. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reached on (571) 272-0661. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.


E.White


James O. Wilson
Supervisory Primary Examiner
Technology Center 1600